The case of a company acting under franchise presents somewhat greater difficulties, particularly if special privileges, such as the right of eminent domain or the right to occupy the streets of a city, are conferred. It has been argued that such a contract of enfranchisement contains a term, implied from the nature of the case and assented to on the part of the company by acceptance of the franchise, that service shall continue so long as the public may require it. Some *dicta* in the cases seem to support such a position. See *People* v. *Albany, etc., R. R. Co.*, 24 N. Y. 261, 269; *State* v. *Sioux City, etc., R. R. Co.*, 7 Neb. 357, 374. Moreover the few cases which have been found actually deciding that a public service company may withdraw, are not necessarily inconsistent with this view. In all of them it appeared that continuance in business would involve actual financial loss. *Commonwealth* v. *Fitchburg R. R. Co.*, 12 Gray (Mass.) 180; *State* v. *Dodge City, etc., Ry. Co.*, 53 Kan. 329. The decisions might, therefore, be supported on the ground that the public policy which underlies the obligation to remain in service does not require the maintenance of a losing business. In spite of these cases, however, it seems to have been generally supposed that public service companies of either class may withdraw from business at will. See *Savannah, etc., Co.* v. *Shuman*, 91 Ga. 400, 402. It might well be required, in the case of an enfranchised company at least, that reasonab e notice of withdrawal be given in order that provision might be made for the changed conditions. But if it be desirable that the acceptance of certain privileges should carry with it a correlative duty to render service indefinitely, it would seem that the doctrine should be established by statute rather than by so free a judicial interpretation of the franchise as that adopted in the principal case.

RIGHT OF SET-OFF AS APPLIED TO STOCKHOLDERS' LIABILITY. — Whether or no a stockholder who has been sued upon his statutory liability for the debts of a corporation may plead in discharge a claim of his own against the corporation is, in the absence of express statutory provision, an unsettled question. When the right to enforce such liability is vested in the receiver of the corporation or in the creditors as a body, it is almost universally held that the stockholder must pay in full and prove his claim with the other creditors. *Matter of Empire City Bank*, 18 N. Y. 199; see COOKE, CORP., § 225. If, on the other hand, the statute allows the individual creditor to sue, the stockholder may, by the weight of authority, set off the amount due him from the corporation. *Garrison* v. *Howe*, 17 N. Y. 458; *contra*, *Lauraglenn Mills* v. *Ruff*, 57 S. C. 53; see TAYLOR, CORP., 5th ed., § 732. Two cases in Maryland, decided within a year, adopt the latter rule and allow the stockholder a set-off in an action by a creditor. *Cahill* v. *Association*, 94 Md. 353; *Strauss* v. *Denny*, 53 Atl. Rep. 571.

The rule of the first class of cases where the action is for the benefit of all the creditors seems clearly just. A contrary result, allowing a set-off, would give the stockholder a preference, whenever the property of the corporation together with the sum for which the stockholders are liable proves insufficient to satisfy the creditors. It is true that in bankruptcy a creditor is allowed at common law to set off a debt due the bankrupt. *Ex parte Wagstaff*, 13 Ves. 65. The bankruptcy rule is distinguishable, however, on

the ground that the creditor as a matter of business relies upon the set-off as security in making advances to the bankrupt; while a stockholder can hardly be deemed to have in mind his statutory liability when he deals with the corporation.

Attempts are made upon various grounds to distinguish from the first class of cases the second class, where the individual creditor is allowed to sue. It is said that, since the whole proceeding is in disregard of the rights of other creditors, the stockholder is as much entitled to preference as the creditor who is suing him, THOMPSON, COM. CORP., § 3790; or that it cannot be known that creditors will not be paid in full, *Mathez* v. *Neidig*, 72 N. Y. 100, 104; or that scattered stockholders should be protected as much as possible from creditors who may collect their debts several times, *Ball* v. *Anderson*, 196 Pa. St. 86. These arguments, however, tend rather to impeach the wisdom of the legislature in allowing suit by an individual creditor than to justify a departure from principle in order to lessen the resulting hardship. The cases concede that from lack of mutuality there is not a true set-off and that the defense of the stockholder must be rested upon equitable grounds. *Pierce* v. *Topeka Security Co.*, 60 Kan. 164. Furthermore in an analogous class of cases where the creditor may sue directly for unpaid subscriptions the stockholder is allowed no such defense. *Thompson* v. *Reno Savings Bank*, 19 Nev. 103; *Bolton Carbon Co.* v. *Mills*, 78 Ia. 460. On the whole, since the statutory liability is created for the benefit rather of the outside creditors than of the stockholders, it would seem that if either class is to be preferred, it should be the former.

THE LAST CHANCE DOCTRINE. — "The party who has the last clear opportunity of avoiding the accident notwithstanding the negligence of his opponent is considered solely responsible for it." The last chance doctrine thus expressed was adopted in a recent Louisiana case. *Barnhill* v. *Texas & P. R. R. Co.*, 33 So. Rep. 63. Though stated so broadly, its importance as a doctrine is confined to those cases where the last opportunity to avoid the damage lies with the defendant; for where the negligence of both parties is concurrent, or where the plaintiff has the last chance, recovery is denied by well-established rules of contributory negligence.

The origin of the doctrine is found in the case of *Davies* v. *Mann*, 10 M. & W. 546. The basis there suggested for it is that, though the plaintiff was negligent, his negligence was no part of the legal cause of his damage, since the defendant had the last chance to avoid the accident. The New Hampshire court stated this position clearly when it said that under such circumstances the defendant's negligence was, in law, the sole cause of the injury. See *Nashua Iron, etc., Co.* v. *Worcester, etc., R. R.*, 62 N. H. 159, 163. In that case, however, the fact appeared that a third party's property had been damaged by the accident, and that he had been allowed recovery against the plaintiff. This was possible only on the ground that the plaintiff's negligence was a legal cause of the third party's damage. The plaintiff's negligence thus was treated as a legal cause of the third party's damage, though not of his own. Since the facts in the cases were the same and the damage to each was apparently a natural and probable consequence of the plaintiff's negligence, the inconsistency in the court's position is apparent. The last chance doctrine consequently must stand, if at all, as an exception